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Barbara Armacost

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Celebrating Robert Cochran and the Future of “Embodied” Christian Legal Scholarship

Barbara Armacost*

Abstract

The occasion for this Article is a festschrift for Professor Robert (“Bob”) Cochran. I celebrate Bob’s significant scholarly contributions to the maturing of Christian Legal Scholarship. He applied a Christian perspective to legal issues, hosted conferences, mentored Christian Legal Scholars, and edited books of essays featuring Christian perspectives on law. Bob’s work in this area had a huge influence on the flourishing of Christian Legal Scholarship.

This Article considers the future of Christian Legal Scholarship. It enters an ongoing conversation (disagreement) between law Professors David Skeel and David Caudill. In a 2008 article, Skeel defined Christian Legal Scholarship so narrowly that it eliminated hundreds of articles that Caudill would have included in the genre. In part, Skeel and Caudill were talking past each other: Skeel failed to find examples of Christian Legal Scholarship in “elite” law reviews, while Caudill cited articles from a broader literature. But the debate is also about what “counts” as Christian Legal Scholarship. Skeel’s narrow definition might be correct if the only goal of Christian Legal Scholarship is to persuade a secular audience by presenting a comprehensive descriptive or normative critique of law. Another important goal, however, is to educate and challenge a serious, but receptive religious audience and explore smaller seg-

* Professor of Law, University of Virginia Law School. I am grateful to Bill Brewbaker, Bob Cochran, David Caudill, and David Skeel for helpful conversations and comments on earlier drafts.

ments of an evolving Christian perspective on law. Such scholarship may not satisfy Skeel's narrow definition, but it is no less Christian Legal Scholarship.

In this Article, I propose a more capacious definition that includes what I call "embodied" Christian Legal Scholarship. The ultimate goal of Christian Legal Scholarship, like all human work, is foundationally eschatological: God desires and intends a "new creation," a final, cosmic transformation of the created order. The assurance of new creation provides the normative principles that guide Christians in determining the meaning and purpose of human work. This eschatological focus means that believers are called to pursue the biblical goals of "justice" and "shalom" because these are the marks of the new creation, the world as it is designed and destined to be. The ultimate purpose of Christian Legal Scholarship, then, is to promote human flourishing by moving the law, legal practice and legal institutions to embody the values of the intended new creation. This includes "embodied" Christian Legal Scholarship, scholarship that manifests and pursues redemptive values in nonreligious language. I believe Christian scholars should continue to write articles from an explicitly Christian perspective. But we should also pursue scholarship that embodies the values of justice and shalom but is framed in secular terms. Importantly, this is not about establishing Christianity. It is about joining with our colleagues—religious or not—to seek values that promote human flourishing.

It is an enormous privilege to participate in this celebration of Bob Cochran's many scholarly and programmatic contributions, especially his role in the continued rise of Christian Legal Scholarship. I have known Bob for nearly forty years as a friend, a colleague, and a fellow traveler in the faith. Thinking over these years in preparation for this celebration was a cause for rejoicing over the fruitfulness of Bob's life and work.

I will have more to say about the future of Christian Legal Scholarship later in this paper, but first I want to say a few words in celebration of Bob Cochran. If I were to describe—with one word—Bob's influence in the many, many areas of his academic and professional career, I would use the word *entrepreneur*. This word is most often used in the business context to describe someone who takes more risks than normal in operating an enterprise.¹ While searching the internet for synonyms of entrepreneur, I found the following entry on a website that publishes news and articles about entrepreneurship and small business management: an article entitled *How to Succeed in an Industry You Know Nothing About*.² This title is a humorous way to think about the risk-taking, enterprising creativity of an entrepreneur. But there is a lot of truth in it, and it illuminates many of the ways in which Bob has been the consummate entrepreneur. The definition is apropos, not because Bob literally knew *nothing* about the projects and enterprises he undertook. Rather, it is because Bob has been willing to wade into uncharted territory, which—by definition—neither he nor anyone else knows much about. And he made something happen in these kinds of spaces. Let me highlight just a couple of examples.

The first example goes back to Bob's law school days. While he was a student at the University of Virginia School of Law, Bob and a group of his classmates—including Justice Donald W. Lemons, the current Chief Justice of the Virginia Supreme Court—were instrumental in starting a fellowship of Christian law students, likely one of the first of its kind at a secular law school.³ The group started out small, doubled in size in its second year, and continued to thrive over succeeding years. The Law Christian Fellowship

1. See Brett Nelson, *The Real Definition of Entrepreneur—And Why It Matters*, FORBES (June 5, 2012), <https://www.forbes.com/sites/brettnelson/2012/06/05/the-real-definition-of-entrepreneur-and-why-it-matters>.

2. See Angela Ruth, *How to Succeed in an Industry You Know Nothing About*, ENTREPRENEUR (Jan. 24, 2019), <https://www.entrepreneur.com/article/326610>.

3. See *Our People: Bob Cochran*, CTR. FOR CHRISTIAN STUDY, <https://www.studycenter.net/people/bob-cochran> (last visited Nov. 9, 2019).

(LCF) remains one of the most dynamic and robust fellowships of Christian law students in the country.⁴ One of the most important circumstances that has kept the group vibrant, growing, and healthy is the continued commitment of LCF alumni. After he graduated and was practicing law in Charlottesville, Bob set an example for this kind of involvement. He attended LCF retreats, attended and spoke at LCF meetings, and mentored law students. Over the years, Bob and other former LCF alumni have returned to Charlottesville to speak at LCF meetings and retreats, support LCF financially, and mentor current UVA law students.

After a number of years in private practice, Bob joined the faculty of Pepperdine Caruso Law School.⁵ Perhaps with the rich fellowship of LCF in mind, Bob immediately began to think about how to gather Christian *law professors*, both for fellowship and to encourage one another in their scholarly work. Unlike forming a school-centered student fellowship, finding and gathering Christian law faculty from around the country was a much more difficult undertaking. Bob ultimately came up with an obvious and simple solution, a solution hiding in plain sight: why not add an extra day to the annual Association of American Law Schools (AALS) conference and invite Christian faculty to attend? This extra day became the Christian Law Professors' Conference, where Christian law faculty gathered to present papers in a workshop-style setting. I had the pleasure of participating in a number of these gatherings. They opened opportunities for us to present our own work, discuss and comment on each other's work, and meet new Christian law professor colleagues. The conferences were professionally encouraging and led to academic collaboration on later projects. They were especially uplifting to young Christian scholars attempting to find their way in secular law schools or teaching in settings where being a Christian academic was lonely or hard.

In 2008, Bob founded the Herbert and Elinor Nootbaar Institute for Law, Religion, and Ethics, and the Christian Law Professors' meetings were folded into the Institute's annual spring conferences.⁶ As the Nootbaar Institute's director, Bob hosted twelve different conferences exploring the relationship

4. See *Law Christian Fellowship (LCF)*, U. VA. SCH. L. <https://www.law.virginia.edu/students/student-organizations#lcf> (last visited January 15, 2020).

5. See Robert F. Cochran, Jr., Curriculum Vitae, PEPP. U. (2016), <https://law.pepperdine.edu/faculty-research/robert-cochran/cv-robert-cochran.pdf>.

6. See JENNY ROUGH & JIM GASH, IN GOOD FAITH 201–04 (2018) (detailing the founding of the Nootbaar Institute).

between law and religion.⁷ These conferences were a key factor in the continued development of the genre of scholarship that has become known as “Christian Legal Scholarship” (or Christian Legal Studies).⁸ They also continue to be an oasis of fellowship, friendship, and intellectual encouragement for Christian academics and other religiously affiliated legal scholars. Under Bob’s leadership, the Nootbaar Institute spawned the Global Justice Program, which equips students with the knowledge, skills, experience, and relationships they need to promote justice for the world’s most vulnerable populations.⁹

As an entrepreneur, one of Bob’s defining strengths is his ability to identify unmet needs and exploit untapped potential. The Wm. Matthew Byrne, Jr. Judicial Clerkship Institute, which Bob founded in 2000 and directed for several years, falls into this category.¹⁰ The Judicial Clerkship Institute is an innovative program designed to prepare law students for judicial clerkships.¹¹ Some law schools place many students in jobs as law clerks, and some may also have faculty who have clerked. Students heading to clerkships from these schools tend to have sufficient resources, mentors, and information to prepare them for clerking. Other schools, however, may place fewer students in clerkship positions. These students are bright and promising, but they may have fewer mentors, less information, and much more anxiety about their upcoming clerkships. Bingo. Bob recognized this unmet need and envisioned and created the Judicial Clerkship Institute to mentor such students and help them to develop the skills necessary to be successful law clerks.¹² The Judicial Clerkship Institute has now been in place for almost twenty years.¹³ It welcomes law students from all over the country and boasts an impressive array of federal judges as faculty.¹⁴

7. ROBERT F. COCHRAN, JR., PUBLICATIONS (Nootbaar Inst. Annual Conference ed., 2019), <https://law.pepperdine.edu/nootbaar-institute/annual-conference/content/cochranpublicationsweb.pdf>

8. For a detailed list of articles in the genre of Christian Legal Scholarship, see David S. Caudill, *On the Rhetorical Invention of a Failed Project: A Critical Response to Skeel’s Assessment of Christian Legal Scholarship*, 40 SETON HALL L. REV. 971, 972–81 (2010).

9. *Global Justice Program: Vision and Purpose*, PEPP. U., <https://law.pepperdine.edu/nootbaar-institute/global-justice/about/vision.htm> (last visited Nov. 9, 2019).

10. See ROUGH & GASH, *supra* note 6, at 191–92.

11. *Id.*

12. See *id.* at 192 (Cochran recalling his vision for the program).

13. JUDICIAL CLERKSHIP INSTITUTE 2020, at 2 of 6 (Byrne Judicial Clerkship Inst. ed., 2019), <https://law.pepperdine.edu/judicial-clerkship-institute/content/jci-2020-brochure.pdf>.

14. See *JCI Past Events*, PEPP. L., <https://law.pepperdine.edu/judicial-clerkship-institute/archives/>

In addition to his entrepreneurial skills, the second thing I would say about Bob is that he is *not* a perfectionist. You might think of perfectionism as a virtue, but quite often, the perfect is the enemy of the good. If you are a skilled entrepreneur, you are not (and cannot) be a perfectionist. Trying new things that are considered risky and untested means, by definition, that the evolving projects will be messy. Bob never seems to mind a bit of mess along the way.

I used to laugh to myself when I would look at the roster for the Nootbaar Institute's annual conference. There was always an enormous number of panels and papers. (I wondered sometimes if *anyone* who submitted a paper got turned away.) There were, of course, downsides to a conference with so many panels and papers. But there were also many upsides. Young scholars were welcome. Older scholars who were just trying their hand at the intersection of Christianity and law were welcome. People from multiple faith traditions were welcome.¹⁵ This boisterous, unscripted, and somewhat chaotic atmosphere gave rise to many fruitful, creative, and often unexpected conversations and collaborations. It also demonstrated a generosity of spirit and intellect that celebrated our generous, creative, and extravagant God.

A third word I would use to describe Bob's contributions is *co-laborer*, as he generously and joyously seeks the flourishing of others. As Harry Truman famously said, "It is amazing what you can accomplish if you do not care who gets the credit."¹⁶ Bob hardly ever works alone, choosing instead to invite others to collaborate. His books nearly always have co-editors or co-authors.¹⁷ Many of these volumes are collections of essays that give others a platform to speak.¹⁸ The first of these was a cutting-edge collection of essays, *Perspectives on Christian Legal Thought*, that helped to launch the genre of

(last visited Nov. 9, 2019).

15. See *About the Institute—Vision*, PEPP. L., <https://law.pepperdine.edu/nootbaar-institute/about/> (last visited Nov. 9, 2019).

16. *Harry S. Truman Quotes*, BRAINYQUOTE, https://www.brainyquote.com/quotes/harry_s_truman_109615 (last visited Oct. 9, 2019).

17. See Robert F. Cochran, Jr., *supra* note 5.

18. See, e.g., LAW AND COMMUNITY: THE CASE OF TORTS (Robert F. Cochran, Jr. & Robert M. Ackerman eds., 2004); AGAPE, JUSTICE, AND LAW: HOW MIGHT CHRISTIAN LOVE SHAPE LAW? (Robert F. Cochran, Jr. & Zachary R. Calo eds., 2017); THE COUNSELOR AT LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING (Robert F. Cochran, Jr., John M.A. DiPippa & Martha M. Peters eds., 2014); CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (Robert F. Cochran, Jr., Michael McConnell & Angela Carmella eds., 2001); LAW AND THE BIBLE: JUSTICE, MERCY, AND LEGAL INSTITUTIONS (Robert F. Cochran, Jr. & David VanDrunen eds., 2013) [hereinafter LAW AND THE BIBLE].

Christian Legal Scholarship.¹⁹ Essay collections are very time consuming for editors. They may have to nag authors to complete their essays, enforce quality standards, and revise enormous quantities of scholarship. Editors also get much less credit for collections than they do for their own work. Importantly, though, edited volumes provide a platform for other scholars' work. Bob's willingness to do so many of them demonstrates a kind of scholarly generosity that characterizes his academic life.

I want to end by saying something about the future of Christian Legal Scholarship, the genre of scholarship that Bob has so wonderfully promoted. Embracing the model of other non-legal disciplines that have enriched the study of law with their insights—economics, sociology, psychology, feminism, philosophy, theology—Christian Legal Scholarship seeks to bring a distinctively Christian perspective to our understanding of law.²⁰ In a 2008 article in the *Emory Law Journal*, Professor David Skeel defined Christian Legal Scholarship as academic writing that provides an “identifiably Christian account of what ought to be, or what is,” and “serious[ly] engage[s] the best secular scholarship treating the same issues.”²¹

Later in the article, however, Skeel narrowed his definition in ways that eliminated much of what had come to be called Christian Legal Scholarship: for example, he excluded from the genre articles in which “the relationship between the Biblical passage and the legal issue is simply illustrative—that is, the analysis does not seriously . . . treat it as having normative force,” and also articles that do not “engage the secular legal scholarship in any meaningful way.”²² He also excluded “Christian critiques of prominent movements in, and modes of, legal scholarship” that do not “develop a Christian theory of law against which the legal movement will be measured” or “outline . . . a

19. CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, *supra* note 18; see William J. Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707 (2003) (reviewing CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, *supra* note 18) (calling *Christian Perspectives* a “good and important book” that “deserves to be read widely, both by those who share its authors’ faith and (especially) by those who don’t”).

20. I say “a Christian perspective” because there is not one Christian perspective on law, or anything else for that matter.

21. David A. Skeel, Jr., *The Unbearable Lightness of Christian Legal Scholarship*, 57 EMORY L.J. 1471, 1504 (2008).

22. *Id.* at 1503.

theoretical baseline that can be meaningfully challenged, questioned or applauded.”²³ Applying this definition, Skeel concluded that there was very little true Christian Legal Scholarship coming out of the legal academy.²⁴ He identified only four areas in which he judged that Christian Legal Scholarship had made significant inroads.²⁵

In a spirited and passionate response, Professor David Caudill strongly criticized Skeel for his narrow definition of Christian Legal Scholarship, citing hundreds of books and law review articles in which Christian academics have applied arguments based on scripture, denominational tradition, and theology to legal issues, and engaged secular literatures on those issues.²⁶ Caudill argued that if Skeel was writing a “survey-type article to prove the relative absence of Christian Legal Scholarship, then he [needed to better] consult the literature,” which would have revealed a plethora of Christian Legal Scholarship.²⁷ Skeel could not “escape that responsibility,” Caudill argued, “by defining Christian Legal Scholarship in a way that eliminates much of it.”²⁸

What should we make of this exchange? In my view, Skeel and Caudill are, at least in part, talking past each other.²⁹ Skeel *did* in fact conduct a survey looking for Christian Legal Scholarship, but his survey was limited to so-called “elite” or “leading” law reviews: *Harvard Law Review*, *Columbia Law Review*, *Yale Law Journal*, *Michigan Law Review*, *University of Chicago Law*

23. See *id.* at 1503–04 (internal quotations omitted).

24. *Id.* at 1504–06.

25. *Id.* at 1494–1506. The areas of scholarship named by Skeel are natural law (international human rights), Christian lawyering and legal ethics, First Amendment and church-state issues, and Christian legal history. *Id.*

26. David S. Caudill, *On the Rhetorical Invention of a Failed Project: A Critical Response to Skeel’s Assessment of Christian Legal Scholarship*, 40 SETON HALL L. REV. 971 (2010).

27. *Id.* at 988.

28. *Id.*

29. I say “in part” because in addition to a dispute about where Christian Legal Scholarship is (or should be) published, Caudill also disagrees with Skeel about what *counts* as Christian Legal Scholarship, a point I address later in this Article. I conclude that Skeel’s definition is too narrow to accommodate the range of Christian Legal Scholarship designed to fulfill multiple goals and aimed at a range of audiences. See *infra* notes 40–55 and accompanying text.

Review, *Illinois Law Review*, *University of Pennsylvania Law Review*, *Virginia Law Review*, and *California Law Review*.³⁰ By contrast, Caudill's survey covered law reviews from a much broader range of law schools.³¹ Of the hundreds of articles cited in Caudill's piece, however, almost none of them appeared in Skeel's list of "elite" or "leading" law reviews. Many appeared in religious publications, such as the *Journal of Catholic Social Thought*, the *Journal of Christian Jurisprudence*, and the *Journal of Catholic Legal Studies*.³² Many others were published by law reviews at schools with explicitly Christian affiliations, including the Catholic University of America's School of Law, Fordham University School of Law, Regent University Law School, Notre Dame Law School, Pepperdine Caruso School of Law, St. John's Law School, and Ave Maria School of Law. Relatively fewer appeared in law reviews at elite or secular law schools.

Why the different judgments about what "counts" as Christian Legal Scholarship? Is Skeel just being elitist? I think it depends on what we think is the *goal* of Christian Legal Scholarship—meaning what Christian scholars hope to accomplish by producing it—and who we think is the *audience*. As will become apparent, the two questions are related.

If the (only) *goal* of Christian Legal Scholarship is to enter the broader academic debate about particular legal issues and persuade a *secular* audience to consider the normative or descriptive claims of a Christian critique of law, then Skeel is probably right: Christian academics should aim to publish in the elite, leading law reviews, and Christian Legal Scholarship must demonstrate the academic features that make this possible. In this space, Skeel's narrower definition of Christian Legal Scholarship might be justified.³³ To hold sway in the secular marketplace, Christian Legal Scholarship must be comprehensive and sophisticated, both in its theological claims and its grasp of the secular literature. It must seek to engage scriptural passages in broad theological terms, giving them normative or descriptive force. It must demonstrate a robust familiarity with secular scholarship and engage it in a meaningful way. When offering a Christian critique of other movements and modes of legal

30. See Skeel, *supra* note 21; David A. Skeel, Jr., *The Paths of Christian Legal Scholarship*, 12 GREEN BAG 2d 169 (2009), http://www.greenbag.org/v12n2/v12n2_skeel.pdf (affirming his assessment of Christian legal scholarship in Skeel, *The Unbearable Lightness of Christian Legal Scholarship*, *supra* note 21, while acknowledging that he had focused on elite law journals).

31. See generally Caudill, *supra* note 26, at 973–81.

32. See *id.* at 973–81, 982.

33. Skeel, *supra* note 21, at 1502–04 (definition of Christian Legal Scholarship).

scholarship, Christian legal scholars should be prepared to offer a normative Christian account—a “theological baseline”—that can be meaningfully debated, questioned, or embraced.³⁴ While one could take issue with the precise features of Skeel’s definition, his basic point is an important one: Christian Legal Scholarship that wishes to enter the secular marketplace must be prepared to take on that marketplace on its own terms.³⁵

I don’t want to be misunderstood here. I am not saying that Skeel’s definition of what kind of Christian Legal Scholarship is adequate to enter mainstream law reviews is precisely correct. I am also not saying that the hundreds of articles and books cited in Caudill’s footnotes are inadequate by that (or some other) definition, or that none “deserved” to be published in elite law reviews. Skeel looked at four very limited categories of Christian Legal Scholarship within a narrow group of law reviews.³⁶ He did not apply his own definition to the reams of individual articles published in non-elite law reviews,³⁷ and I would guess that many of those articles would qualify as Christian Legal Scholarship under Skeel’s (or some other) definition.³⁸ In addition, there are multiple reasons—that may have nothing to do with quality—why those who make explicitly religious arguments in their legal scholarship may

34. *Id.* at 1504.

35. *Id.* at 1504–05.

36. Skeel, *supra* note 21, at 1494–1506.

37. *Id.* Skeel says of the many articles that “feature an identifiably Christian perspective, but do not fit into any of the categories [he has] considered,” that “these articles are not . . . the basis for a serious body of Christian legal scholarship.” *Id.* at 1502. He does not, however, claim to have looked carefully at each of these articles to determine whether they actually fulfilled his carefully crafted definition.

38. I am also not saying that publication in elite law reviews is a reliable signal of quality (or that rejection is a sign of lack of quality). Of course, it is not. As all academics know, the law review editors who choose articles—smart and earnest as they are—are hampered by limited knowledge and experience. Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1132 (1995). They are also driven by incentives and prejudices that may not correlate with quality: publishing authors whose names they recognize, using the author’s law school as a proxy for quality, choosing “sexy” articles that embrace current academic fashions, and avoiding unpopular or “mundane” topics. Over the years, these kinds of prejudgments—as well as animosity toward religion—have cut against publication of Christian legal scholarship. See Caudill, *supra* note 26, at 983–85; Skeel, *supra* note 21, at 1481–86. In addition, publication in an elite law review may be less important for engaging a scholarly audience today than it was prior to the digital age. Articles are published on SSRN and other on-line publications, and there are many other digital avenues—blogs, Twitter, specialized websites, etc.—for getting one’s work noticed. That being said, for better or for worse, publication in an elite law review continues to be seen by scholars as a quick and dirty (and lazy?) way to decide what scholarship to read or engage with.

have difficulty getting published in elite law reviews.³⁹

Importantly, however, engaging and persuading a non-religious audience is not the only role for Christian Legal Scholarship, and secular colleagues are not its only audience: legal academics who write in the genre of Christian Legal Scholarship also write for their Christian colleagues and students.⁴⁰ In this context, Christian legal scholarship takes on the roles of educating those who are seeking to enrich their theological understanding of law and challenging those who have not yet considered the vocational and scholarly implications of their faith.⁴¹

Jeremy Waldron made this point eloquently in a 2008 speech defending the publication of an extensive, theologically rich document that argued against the use of torture in the wake of the 9/11 terror attacks.⁴² Waldron was responding to the argument that “people of faith should refrain from participating in public debate in terms that reflect their religious commitments” because such arguments would be incomprehensible to a secular audience.⁴³ He argued that an important role for explicitly religious argumentation in the public square is to address one’s own community of believers “trying to awaken them to something that he thinks follows from what they already believe,” while also “bearing witness” or “explaining [oneself]” to a secular audience.⁴⁴

This kind of academic writing fulfills an essential role for Christian Legal Scholarship, and it does not require publication in elite law reviews. The fact

39. See Caudill, *supra* note 26, at 983–85; Skeel, *supra* note 21, at 1481–86.

40. See generally CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, *supra* note 18, at xxii (describing the editors’ hope that the book will help “Christian lawyers, legal scholars, students, citizens, and lawmakers to think more deeply about the connection between the truths of the gospel, . . . and the legal questions that face this world” and “non-Christian lawyers, legal scholars, citizens, and lawmakers will find these essays an illuminating introduction to ways of thinking about law that they may never have encountered before”).

41. One of the most important recent examples of Christian legal scholarship whose primary purpose is to educate and persuade is the first casebook on the subject. See PATRICK MCKINLEY BRENNAN & WILLIAM S. BREWBAKER III, CHRISTIAN LEGAL THOUGHT: MATERIALS AND CASES (2017).

42. For a revised version of the speech, see Jeremy Waldron, *Two-Way Translation: The Ethics of Engaging with Religious Contributions in Public Deliberation*, 63 MERCER L. REV. 845 (2012).

43. *Id.* at 857.

44. *Id.* at 858. Waldron also disputes the assertion that religious claims are incomprehensible to nonbelievers. *Id.* at 858–61. He concludes that “the opponents of religious interventions simply underestimate the prospects for mutual intelligibility and misrepresent the sources of misunderstanding.” *Id.* at 860.

that a critical mass of Christian Legal Scholarship is published in religious studies journals and by religiously affiliated law schools is no barrier (and is perhaps a benefit) to facilitating academic conversations among Christian faculty and students. These conversations educate and persuade. They offer a rich source of materials that wrestle well with the intersection of Christian theology and law. They bear witness to our believing students and colleagues—and to our secular colleagues—that Christianity has important things to say about law.⁴⁵ (Many Christian students over the years have emphasized how important it is for them to have role models who are first-rate scholars and teachers, and who have identified themselves publicly as serious Christians.) This different purpose and audience does not change the basic nature of Christian Legal Scholarship: It should be high-quality academic writing that seriously engages scripture, tradition, and theology, and explores normative theories or descriptive accounts of some aspect of law.⁴⁶ The fact that some Christian Legal Scholarship is designed primarily to educate and persuade a serious but receptive audience, however, means it need not appear in leading law reviews, and it need not meet Skeel’s very narrow definition that eliminated hundreds of articles from the genre of Christian Legal Scholarship.

Let me offer an example of the difference I envision between these two categories of Christian Legal Scholarship, although, of course, they will overlap. Suppose a criminal law scholar wishes to explore the concept of “justice” in the Christian Bible. She might begin by doing a word study of the Hebrew word *mishpat*, which is translated by the English word “justice” or “justly” throughout the Old Testament.⁴⁷ She will discover that *mishpat* is first and foremost an attribute of God.⁴⁸ God calls his people to embody the attribute of *mishpat*, meaning “rightness rooted in God’s character” and to embody *mishpat* in their dealings with one another.⁴⁹ Additional research by our scholar would explore the meaning and nature of biblical justice more broadly

45. See Waldron, *supra* note 42, at 858 (describing the role of an explicitly Christian argument or declaration as “simply bearing witness” or “tr[ying] to convey even to nonbelievers the seriousness and high stakes that the [Christian] speaker sees as bound up with the issue” or “warning them, the best way he can, of the seriousness of the issue as he sees it”).

46. See Skeel, *supra* note 21, at 1478.

47. 2 THEOLOGICAL WORKBOOK OF THE OLD TESTAMENT 949 (R. Laird Harris, Gleason L. Archer Jr. & Bruce K. Waltke eds., 1980); see, e.g., *Micah* 6:8 (New International Version).

48. *Id.*

49. *Id.*

by considering God's justice toward his people, exhortations in the Psalms and prophetic literature to pursue justice, and New Testament passages that bear on the topic. To enrich her understanding, the researcher would also be wise to consult relevant writings from denominational traditions and the rich theological literature on the topic of justice. From this study, she would learn, among other things, that biblical justice is not primarily about punishment for rule-breaking, but about the right use of power, especially in relationships involving a power dynamic.⁵⁰ To act justly in biblical terms is to judge rightly, to protect and defend the weak, vulnerable, and poor, to pay fair wages, and to welcome the stranger.⁵¹ The scholar's criminal justice expertise would tell her that the biblical concept of justice is quite different from—and more capacious than—the narrower legal notion of “retributive justice” that drives much of the American legal system.⁵²

A first article by this scholar might be quite modest, laying out the meaning of biblical justice and noting the differences between it and American retributive justice. Such an article might be designed to create a conversation with other Christian legal scholars, and educate others who had not yet thought deeply about the implications of Christian theology on legal scholarship implicating issues of justice. In subsequent articles, our Christian legal scholar would begin to formulate a more comprehensive theological account of biblical justice. She might offer a descriptive explanation of the influence of Christianity on understandings of justice in the American, or other legal systems. This scholarship would seriously engage with the secular literature on justice, including the existing literature on retributive versus restorative justice. Eventually, our Christian legal scholar might offer a comprehensive Christian view of biblical justice and ultimately a normative theological account, which could serve as a baseline to compare secular accounts of justice and submit to meaningful critique by other scholars, both secular and religious.⁵³

50. BRUCE K. WALTKE, A COMMENTARY ON MICAH 391 (2007).

51. See Barbara E. Armacost & Peter Enns, *Crying Out for Justice*, in LAW AND THE BIBLE, *supra* note 18, at 126–29.

52. See WAYNE R. LAFAYE, SUBSTANTIVE CRIMINAL LAW 51–54, 59–61 (3d ed. 2018). For a description of a retributive theory of criminal punishment, see generally LARRY ALEXANDER, KIMBERLY KESSLER FERZAN & STEPHEN MORSE, CRIME AND CULPABILITY (2009).

53. See Skeel, *supra* note 21, at 1504. I say “a” comprehensive Christian view because we should not assume that there is only one “Christian view” on law. The limits of human understanding—and the reality of sin in the human heart—call for an appropriate (and significant) level of modesty and a willingness to hold truth claims with an open mind.

By the most straightforward definition, *all* of this scholarship is Christian Legal Scholarship: it is academic writing that seriously engages scripture, denominational traditions, and theological literatures, and explores normative and descriptive implications of those materials for our understanding of law, legal practice, or legal institutions. In its earliest stages, some Christian Legal Scholarship may not be comprehensive or sophisticated in Skeel's way of thinking. It may use one or more biblical passages to explore a legal issue without being exhaustive of all relevant passages and without fully engaging the secular literature on the topic.⁵⁴ It may seek to critique particular legal movements from a Christian perspective, with excellent mastery of the literature being critiqued, but without offering a fully-formed Christian theory of law.⁵⁵ This early scholarship may not be designed or ready to engage a secular audience. It may be incomplete, subject to substantive criticism, or limited in its broader implications. In my view, however, such work *is* Christian Legal Scholarship and it has an important role to play in education, proclamation, ongoing discussion, and ultimately engagement in secular spaces.

Let me offer one additional, crucial point about the future of Christian Legal Scholarship, which concerns the intended, redemptive purpose of all human work, including academic work. The Christian theology of work is foundationally eschatological. It is grounded in the "anticipatory experience of God's new creation" (in the miracles, teachings, life, death and resurrection of Jesus Christ) and the assurance of its final consummation in the new heavens and new earth.⁵⁶ As theologian Miroslav Volf explains it, the first premise in a theology of work is that God desires (and intends) a new creation for human beings: "New creation is the end of all God's purposes with the universe, and as such, either explicitly or implicitly is the necessary criterion of all human action that can be considered good."⁵⁷ The concept and assurance of new creation, then, provides the normative principles that should guide Christians in determining the practices and goals of human work.⁵⁸ This eschatological focus means that believers are called to pursue justice and shalom

54. Skeel, *supra* note 32, at 1502–03.

55. *Id.* at 1503–04.

56. MIROSLAV VOLF, WORK IN THE SPIRIT: TOWARD A THEOLOGY OF WORK 79 (1991).

57. *Id.* at 81.

58. *Id.* In the words of theologian NT Wright:

[W]hat we can and must do in the present, if we are obedient to the gospel, if we are following Jesus, and if we are indwelt, energized, and directed by the Spirit, is to build *for* the kingdom. . . . That is the logic of the mission of God. God's recreation of his wonderful

in their communities, as these are the marks of the new heavens and the new earth, the world as it is intended and destined to be.⁵⁹

The ultimate goal of Christian Legal Scholarship, then, is to promote human flourishing by moving the law, legal practice, and legal institutions to embody justice and shalom. To pursue justice means, among other things, to protect people from violence, pursue equity and impartiality, and seek the restoration of communities.⁶⁰ Shalom, though sometimes translated by the English word “peace,” is a much more capacious word that means “universal flourishing, wholeness and delight.”⁶¹ To seek shalom is to work for human intimacy and reconciliation, beauty, health, wholeness, hope, comfort, unity, security, economic flourishing, and sustainability.⁶² Those who seek to follow Jesus in their academic (or other) vocations are called to work redemptively in the “world of space, time and matter . . . where real people live, where communities happen, where difficult decisions are taken,” teaming up with *any and all* of our colleagues who are working for human flourishing in these spaces.⁶³

world, which began with the resurrection of Jesus and continues mysteriously as God’s people live in the risen Christ and in the power of his Spirit, means that what we do in Christ and by the Spirit in the present is not wasted. It will last all the way into God’s new world. In fact, it will be enhanced there. . . . The resurrection of Jesus and the gift of the Spirit mean that we are called to bring real and effective signs of God’s renewed creation to birth even in the midst of the present age.

N.T. WRIGHT, SURPRISED BY HOPE 208–09 (2008).

59. See generally AMY L. SHERMAN, KINGDOM CALLING 27–44 (2011) (describing what justice and shalom will ultimately mean in the “new heavens and the new earth” by invoking “preview passages,” scriptures that describe the future, consummated Kingdom of God).

60. Biblical justice includes three big ideas: (1) rescuing people from abuses of power, including violence, coercion and deception; (2) ensuring equity and impartiality, i.e., making sure that the poor and powerless are not disproportionately burdened by society’s problems; and (3) restoration, which includes healing for both victims and wrongdoers and working to right deep-seated, structural wrongs such as racial discrimination. *Id.* at 28–33.

61. *Id.* at 34 (quoting Cornelius Plantinga, Jr., *Educating for Shalom: Our Calling as a Christian University*,” CALVIN U., www.calvin.edu/about/shalom.html (last visited Nov. 20, 2019)).

62. SHERMAN, *supra* note 59, at 33–43.

63. WRIGHT, *supra* note 58, at 265. Christian legal scholars can and should collaborate with anyone—believer or not—who is seeking justice and shalom in the legal system. NT Wright calls this human vocational work of offering foretastes of the kingdom of God, “building for the kingdom.” *Id.* at 208. Miroslav Volf calls it “cooperation with God.” VOLF, *supra* note 56, at 98–102. While the final consummated kingdom of God—the final coming together of heaven and earth—will be “God’s supreme act of new creation,” God calls his people to be agents of redemption, his “rescuing stewards over creation.” WRIGHT, *supra* note 58, at 202. “The work we do in the present . . . gains its full significance from the eventual design in which it is meant to belong. Applied to the mission of [God’s people], this means that we must work in the present for the advance signs of that eventual state of

In order to influence legal change in these concrete and very practical ways, however, we must be able to convince a secular audience of the truth of our normative or descriptive claims. But suppose, despite all of our efforts to make comprehensive theological arguments, meaningfully engage with the secular literature, develop a Christian theory of law against which other legal movements can be measured, and publish in the most elite law reviews, we find that we are only talking among ourselves?

In 2018, I co-taught a January term seminar at the University of Virginia School of Law called “Christian Perspectives on Legal Thought.” The seminar was welcomed by the law school administration, and it was very well received by the students who took it. The seminar was small, however, and it was almost entirely populated by Christian students. In some ways, that made the teaching easier because the students were already familiar with foundational biblical texts and theological ideas. In addition, it was clear that the students who had chosen the class had been thinking about the intersection of Christianity and law, and were eager to be challenged and instructed in this space. They left the seminar encouraged and better equipped to think deeply about the normative and descriptive implications of Christian theology on the study and practice of law. I also teach a class at the law school on First Amendment regulation of religion. Many of the students who gravitate toward the class are Christians or other students of faith. While teaching all of these classes is deeply rewarding, there is a sense in which Christians and other religiously oriented people are talking among ourselves. I wonder if the same is true in the world of Christian Legal Scholarship: even when articles are published in elite law reviews—and meet the most stringent definitions of Christian Legal Scholarship—are Christian scholars simply talking among themselves?

There are many reasons why current secular audiences might not be receptive to Christian Legal Scholarship. One objection to the entire genre might be an expectation that Christian Legal Scholarship is incomprehensible to readers who do not share a religious perspective.⁶⁴ In my view this objection is significantly overblown. First of all, there is a large proportion of the

affairs when God is ‘all in all,’ when his kingdom has come and his will is done ‘on earth as in heaven.’” *Id.* at 211; *see also* VOLF, *supra* note 56, at 96 (calling the good results of human work the “‘building materials’ of the glorified world”).

64. *See generally* Waldron, *supra* note 42, at 856–61. Waldron disputes this claim:

I do not believe that the issue is the “can’t” of intelligibility; rather, I think the issue is the “won’t” of intellectual refusal. Many people have resolved to have nothing to do with

American population that is committed to some form of religious belief. Moreover, basic conversance with religious ideas is a matter of cultural literacy. Many theological arguments will be (or should be) broadly familiar to a large number of readers. Second, theological arguments are no less familiar (or comprehensible) than economic arguments, sociological arguments, or feminist arguments. Cross-disciplinary critiques of law require readers to educate themselves on concepts and ideas from outside of law, ideas that are no more difficult or unfamiliar than religious ideas. Third, there is reason to think that we underestimate the potential for readers from disparate backgrounds to discuss ideas and learn from one other.⁶⁵ When human beings are “curious” about each other’s beliefs, they can be enormously resourceful in overcoming what appear to be “barriers of incomprehensibility.”⁶⁶ Fourth, theological ideas, religious practice, and religious disputes have influenced the development and shape of law. In addition, many individuals who administer, interpret, or submit to legal rules continue to be influenced by religious ideas. Basic religious literacy is essential for an adequate understanding of both the evolution of law and key aspects of its operation.

It may be that legal readers are simply uninterested in Christian perspectives on law or believe there is nothing to gain from studying it. One can’t study and evaluate everything, although a general “posture of disinterest” toward important and potentially valuable ideas conflicts with basic notions of academic discourse.⁶⁷ In any event, a claim that Christian Legal Scholarship is not interesting is different from saying it is somehow less legitimate or less comprehensible than other, cross-disciplinary perspectives on law.

As long as such negative attitudes toward Christian Legal Scholarship continue to exist, however, they may limit its impact for redemptive law reform. While Christian legal scholars should continue to offer explicitly theological critiques in secular spaces. I want to suggest that what we need is more scholarship that is theologically informed, but not explicitly Christian, what I

religious thought, and standing firm on that resolution, they demand to be spoken to in only secular terms.

Id. at 861; see also William Brewbaker, *Who Cares? Why Bother?: What Jeff Powell and Mark Tushnet Have to Say to Each Other*, 55 OKLA. L. REV. 533, 534–35 (2002) (acknowledging this objection).

65. Waldron, *supra* note 42, at 859.

66. *Id.*

67. See Brewbaker, *supra* note 64, at 539–40. Brewbaker argues: “If scholars are entitled to ignore arguments without recourse to something beyond personal interest, the truth-seeking function of academic discourse ceases.” *Id.* at 540.

want to call “embodied” Christian Legal Scholarship. I use this term to describe scholarship that “embodies” redemptive values in nonreligious language. Recall that the intended purpose for all Christian Legal Scholarship is to pursue God’s redemptive purposes—to pursue justice and shalom—in the legal context. The values of justice (protection from violence, equity, impartiality, and restoration) and shalom (reconciliation, beauty, health, wholeness, hope, comfort, unity, security, economic flourishing, and sustainability) are not explicitly Christian values. Many of these values are shared by both religious and nonreligious legal scholars and practitioners. Christians embrace justice and shalom because they believe these values are ordained by God to promote human flourishing, while others might adopt them for nonreligious reasons. The fact that they are mutually shared, however, means that embodied Christian Legal Scholarship may be more widely read, more persuasive to a secular audience, and ultimately more redemptive than explicit Christian Legal Scholarship. Every argument that uncovers legal injustice toward the weak and powerless, every article that calls for reconciliation over vengeance, every book that promotes economic flourishing and sustainability, every lecture that calls students to seek wholeness, health, and beauty, any effort that promotes the values of the Kingdom of God has redemptive power.⁶⁸ Scholarship that seeks these things is embodied Christian Legal Scholarship.

I am not saying that believing scholars should stop doing explicit Christian Legal Scholarship. It is important that we continue to do that better and more systematically. But Christian legal scholars also need to encourage one another to produce embodied Christian Legal Scholarship that pushes the law in the direction of justice and shalom, but is not framed in religious terms.

There are many good examples of this kind of work. One well-developed exemplar is the now robust scholarship and legal practice of restorative justice. The restorative justice movement was launched by Howard Zehr, who theorized the differences between biblical (restorative) justice and American retributive justice in his ground-breaking book, *Changing Lenses*.⁶⁹ While Zehr’s book made explicitly Christian arguments, the restorative justice movement has since moved into secular academic spaces and given rise to secular restorative practices.⁷⁰ Scholarly work by Christian academics that

68. See generally SHERMAN, *supra* note 59 (identifying justice and shalom as the primary marks of the kingdom of God and describing the nuances of these two ideas); WRIGHT, *supra* note 58, at 208.

69. See generally HOWARD ZEHR, *CHANGING LENSES* (1990).

70. See generally HANDBOOK OF RESTORATIVE JUSTICE (Gerry Johnstone & Daniel W. Van Ness eds., 2002); RESTORATIVE JUSTICE AND THE LAW (Lode Walgrave ed., 2002). *Id.* One prominent

endeavors to move the criminal law in directions that seek reconciliation and restoration is embodied Christian scholarship to the extent that it is informed and animated by a biblical view of justice.

Many Christian scholars are doing this kind of redemptive secular scholarship in all kinds of subject areas, though perhaps they do not think of it as Christian Legal Scholarship. This is precisely what it is, however, if our scholarship is founded on a biblically informed critique of the law, shaped by scholarly conversations with believing colleagues, and designed to promote justice and shalom on the earth.

Does the commitment to do embodied Christian Legal Scholarship require that Christian legal scholars continue to do the background work to develop a “Christian theory of law,” against which other legal movements can be measured, a “theological baseline” that can be “meaningfully challenged, questioned, or applauded?”⁷¹ Indeed, it does! The need for such systematic, normative work is even more important now than it ever was. Moreover, as we grow in *that kind* of scholarship, it does not matter if believers are the only ones reading it. An important purpose for explicitly Christian Legal Scholarship is that Christian legal academics continue to develop a robust, collective sense for what a legal system would look like if it were designed to support the flourishing of human beings made in the image of God.⁷²

I want to pause here and make sure I am not misunderstood when I talk about embodied Christian Legal Scholarship. This is not about some clandestine effort to establish (or reestablish) America as a Christian nation.⁷³ Some

example of a restorative practice is victim/offender mediation, which has taken hold in many jurisdictions. See Rebecca Beitsch, *Victims and offenders find justice through reconciliation programs*, USA TODAY (July 23, 2016), <https://www.usatoday.com/story/news/nation-now/2016/07/23/victims-and-offenders-find-justice-through-reconciliation-programs/87439390/>.

71. Skeel, *supra* note 21, at 1504.

72. A normative Christian view of law would begin with the nature of human beings, that we are made in the image of God and therefore have innate dignity and value. But we are also broken, corrupted by human sin and unable to be the people we were meant to be. So, a Christian view of law would take seriously the role of law in constraining sin, including the sin of those enforcing the law. It would study carefully the eschatological destiny of mankind and all of creation, and consider its implications for the human vocation of law. It would be both descriptive and normative, laying out the ways in which Christian truth has influenced the law and identifying the ways in which current law fails to live up to a Christian conception of law.

73. See CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, *supra* note 18, at xx (identifying the concern on the part of some that Christian Legal Scholarship “would be the opening wedge in a program to reassert Christian hegemony”); see also Martha T. McCluskey, *Thinking with Wolves: Left Legal Theory After the Right’s Rise*, 54 BUFF. L. REV. 1191, 1222 (2007) (reviewing LEFT LEGALISM/LEFT CRITIQUE (Wendy Brown & Janet Halley eds., 2002) (viewing Christian legal theory as part of a right-

American Christians once believed, and some continue to believe, that America was—or should be—a “Christian nation.”⁷⁴ I reject this view as historically and theologically indefensible.⁷⁵ The new covenant in Jesus Christ is not about establishing an earthly Christian nation, but about building the people of God, the church in whatever nation believers find themselves.⁷⁶ It is about the inbreaking—but inchoate—reign of God on the earth, which Jesus announced in his words and demonstrated in his miraculous works.⁷⁷ It is about the certainty that God will do a final, cosmic, and transformative work to usher in the new heavens and a new earth where God’s reign will prevail over sin and death.⁷⁸ It is about the Christian vocation to participate in God’s inbreaking reign by offering foretastes of the kingdom of God to our communities.⁷⁹ It is about seeking the good of our neighbors wherever we find ourselves.

The values of the kingdom of God are not liberal or conservative, left-wing or right-wing, republican or democratic.⁸⁰ They are the values that promote the flourishing of human beings and the created world. Seeking justice

wing agenda to “rethink the foundations of American law” through theoretical scholarship and legal theory). *But see* Brewbaker, *supra* note 64, at 536–37 (arguing that the essays in *Christian Perspectives on Legal Thought* contain little or no “take back American” rhetoric and represent a “wide spectrum of political opinion”).

74. *See generally* Jared A. Goldstein, *How the Constitution Became Christian*, 68 HASTINGS L.J. 259 (2017).

75. For historical and theological critiques of this claim see generally MARK A. NOLL, NATHAN O. HATCH & GEORGE M. MARSDEN, *THE SEARCH FOR CHRISTIAN AMERICA* (1989); JOHN FEA, *WAS AMERICA FOUNDED AS A CHRISTIAN NATION?* (2011). One of the best-known proponents of the Christian nation argument to popular audiences is evangelical Christian activist and author, David Barton, who founded the website *WallBuilders* to promote his ideas. *See Is America a Christian Nation?*, WALLBUILDERS, <https://wallbuilders.com/america-christian-nation/> (last visited January 17, 2020). His historical claims and legal analysis have been criticized by academic historians. *See* Thomas Kidd, *The David Barton Controversy*, WORLD MAG. (Sept. 7, 2012), https://world.wng.org/2012/08/the_david_barton_controversy?. *See generally* WARREN THROCKMORTON & MICHAEL COULTER, *GETTING JEFFERSON RIGHT: FACT CHECKING CLAIMS ABOUT OUR THIRD PRESIDENT* (2012). For an argument against contemporary Catholic integralism, see Micah Schwartzman & Jocelyn Wilson, *The Unreasonableness of Catholic Integralism* (Univ. of Va. Law Sch. Pub. Law & Legal Theory Research Paper No. 2019-43, 2019), <https://ssrn.com/abstract=3436376>.

76. *See Jeremiah* 31:31–34.

77. *See Luke* 4:18–21; *see also* SHERMAN, *supra* note 59, at 18 (describing how Jesus interpreted his miracles and other works using “kingdom language,” as demonstrating the inbreaking of the kingdom of God).

78. *See Revelation* 21:1–5.

79. WRIGHT, *supra* note 58, at 200.

80. Resistance to Christian Legal Scholarship has come from those who fear that a Christian view

means rescuing the oppressed, protecting the weak and vulnerable, promoting equity, and restoring individuals and communities.⁸¹ Seeking shalom means promoting beauty, health, wholeness, peace, security, lack of violence, economic flourishing and sustainability.⁸² Doing embodied Christian Legal Scholarship means that believing scholars endeavor to write redemptively, aiming to promote kingdom values by the articles we choose to write and the arguments we make in those articles. Embodied Christian scholarship is secular scholarship that is deeply informed by Christian theology without using religious arguments. It is *not* about establishing Christianity, it is about seeking the prosperity of our communities by promoting human flourishing.

When the nation of Israel was sent into exile in Babylon, the people were instructed to pray and work for the welfare of the city in which they found themselves, knowing that if the city prospered, they would prosper along with their neighbors.⁸³ Like the ancient Israelites, Christian legal scholars are called to seek the well-being of our communities by working for justice and shalom through our scholarship, teaching, and other legal work. We will do this best by continuing to do robust and systematic Christian Legal Scholarship that educates ourselves and our colleagues, striving to publish our work in scholarly journals where it is most likely to be read and engaged by our secular colleagues, and then making sure that our “secular” scholarship *is* embodied Christian Legal Scholarship, i.e., is animated and informed by the values of the kingdom of God.

Let me end by saying “thank you, Bob,” for all your contributions to the growth, breadth, and maturing of Christian Legal Scholarship. Thank you for your mentorship of young Christian scholars and for providing multiple platforms for all of us. Let us continue these efforts together in our cultural moment—to the good of our neighbors and to the glory of the Lord Jesus.

of law “will yield an authoritarian conservative regime, to the detriment of . . . progressive causes.” CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, *supra* note 18, at xxi. These fears largely stem from the fact that some of the most vocal proponents of Christian perspectives on law and politics have come from the so called “religious right.” This characterization is an inaccurate caricature, as Christians hail from all parts of the ideological spectrum. Historically, evangelical Christians have championed many progressive (as well as conservative causes), including abolition, women’s suffrage, and universal suffrage. The Catholic Church in America has vigorously opposed capital punishment, and supported labor, social welfare, and immigration reform. *Id.*; see also Brewbaker, *supra* note 64, at 536–37 (pointing out that the essays in *Christian Perspectives on Legal Thought* come from many political perspectives and do not argue for establishing a Christian America).

81. SHERMAN, *supra* note 59, at 28–30.

82. *Id.*

83. *Jeremiah* 29:7.

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